

EXHIBIT 10

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and Nutmeg Insurance Company

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

10 FIRST STATE INSURANCE COMPANY) Case No. BC354664
11 AND)
12 NUTMEG INSURANCE COMPANY,) COMPLAINT FOR DECLARATORY
13 Plaintiffs,) RELIEF, EQUITABLE INDEMNITY,
14 v.) AND EQUITABLE CONTRIBUTION
15 VULCAN MATERIALS COMPANY,)
16 ACE PROPERTY AND CASUALTY)
17 INSURANCE COMPANY,)
18 AFFILIATED FM INSURANCE)
19 COMPANY,)
20 ALLIANZ UNDERWRITERS INSURANCE)
21 COMPANY,)
22 AMERICAN EXCESS INSURANCE)
23 EXCHANGE,)
24 AMERICAN HOME ASSURANCE)
25 COMPANY,)
26 AMERICAN RE-INSURANCE COMPANY,)
27 ATLANTA INTERNATIONAL)
28 INSURANCE COMPANY,)
CENTURY INDEMNITY COMPANY,)
CERTAIN UNDERWRITERS AT LLOYDS)
OF LONDON,)
CONTINENTAL CASUALTY COMPANY,)
EMPLOYERS REASSURANCE)
CORPORATION,)
EMPLOYERS REINSURANCE)
CORPORATION,)
FIREMAN'S FUND INSURANCE)
COMPANY,)
GERLING AMERICA INSURANCE)
COMPANY,)
GRANITE STATE INSURANCE)
COMPANY,)

1 HOLLAND-AMERICA INSURANCE)
 2 COMPANY,)
 2 INDUSTRIAL INDEMNITY INSURANCE)
 3 SERVICES, INC.,)
 3 INSURANCE COMPANY OF NORTH)
 4 AMERICA,)
 4 INTEGRITY INSURANCE COMPANY,)
 5 LEXINGTON INSURANCE COMPANY,)
 5 NATIONAL UNION FIRE INSURANCE)
 6 COMPANY OF PITTSBURGH, PA,)
 6 NORTHWESTERN NATIONAL)
 7 INSURANCE COMPANY OF)
 7 MILWAUKEE, WISCONSIN,)
 8 PACIFIC EMPLOYERS INSURANCE)
 8 COMPANY,)
 9 PACIFIC INDEMNITY COMPANY,)
 9 SAFETY NATIONAL CASUALTY)
 10 CORPORATION,)
 10 STONEWALL INSURANCE COMPANY,)
 11 THE CONTINENTAL INSURANCE)
 11 COMPANY,)
 12 TIG INSURANCE COMPANY,)
 12 TRANSPORT INSURANCE COMPANY,)
 13 UNIGARD INDEMNITY COMPANY,)
 13 UNITED STATES FIRE INSURANCE)
 14 COMPANY,)
 14 XL INSURANCE AMERICA, INC.,)
 15 ZURICH AMERICAN INSURANCE)
 15 COMPANY,)
 15 and DOES 1 through 300, inclusive,)
 16)
 16 Defendants.)
 17

18
 19 As a Complaint against VULCAN MATERIALS COMPANY, ACE PROPERTY
 20 AND CASUALTY INSURANCE COMPANY, AFFILIATED FM INSURANCE
 21 COMPANY, ALLIANZ UNDERWRITERS INSURANCE COMPANY, AMERICAN
 22 EXCESS INSURANCE EXCHANGE, AMERICAN HOME ASSURANCE COMPANY,
 23 AMERICAN RE-INSURANCE COMPANY, ATLANTA INTERNATIONAL INSURANCE
 24 COMPANY, CENTURY INDEMNITY COMPANY, CERTAIN UNDERWRITERS AT
 25 LLOYDS OF LONDON, CONTINENTAL CASUALTY COMPANY, EMPLOYERS
 26 REASSURANCE CORPORATION, EMPLOYERS REINSURANCE CORPORATION,
 27 FIREMAN'S FUND INSURANCE COMPANY, GERLING AMERICA INSURANCE
 28 COMPANY, GRANITE STATE INSURANCE COMPANY, HOLLAND-AMERICA

1 INSURANCE COMPANY, INDUSTRIAL INDEMNITY INSURANCE SERVICES, INC.,
 2 INTEGRITY INSURANCE COMPANY, LEXINGTON INSURANCE COMPANY,
 3 NATIONAL UNION FIRE INSURANCE COMPANY OF PITTSBURGH, PA,
 4 NORTHWESTERN NATIONAL INSURANCE COMPANY OF MILWAUKEE,
 5 WISCONSIN, PACIFIC EMPLOYERS INSURANCE COMPANY, PACIFIC INDEMNITY
 6 COMPANY, SAFETY NATIONAL CASUALTY CORPORATION, STONEWALL
 7 INSURANCE COMPANY, THE CONTINENTAL INSURANCE COMPANY, TIG
 8 INSURANCE COMPANY, TRANSPORT INSURANCE COMPANY, UNIGARD
 9 INDEMNITY COMPANY, UNITED STATES FIRE INSURANCE COMPANY, XL
 10 INSURANCE AMERICA, INC., ZURICH AMERICAN INSURANCE COMPANY, and
 11 Does 1 through 300, inclusive (collectively, "Defendants"), Plaintiffs FIRST STATE
 12 INSURANCE COMPANY and NUTMEG INSURANCE COMPANY (collectively,
 13 "Plaintiffs") allege as follows:

14 **NATURE OF THE ACTION**

15 1. Plaintiffs bring this civil action for declaratory relief pursuant to California
 16 Code of Civil Procedure Section 1060. Plaintiffs ask the Court to declare and adjudge the
 17 rights, obligations and duties of the parties under certain insurance policies issued or allegedly
 18 issued by Plaintiffs and allegedly providing coverage to Vulcan Materials Company
 19 ("Vulcan") and/or Does 1 through 100, as more fully set forth below.

20 2. Specifically, Plaintiffs ask the Court to determine that they have no duty to
 21 indemnify Vulcan and/or Does 1 through 100 under any insurance policies issued by Plaintiffs
 22 and allegedly providing coverage to Vulcan and/or Does 1 through 100, for some or all of the
 23 costs, expenses, damages, settlements or judgments incurred or to be incurred with respect to
 24 environmental lawsuits against Vulcan arising from the alleged release of chemicals into the
 25 environment from sites in the city of Modesto, California, (the "Modesto Environmental
 26 Lawsuits," as defined more fully below).

27 3. In addition, if the Court finds that Plaintiffs have a duty to indemnify Vulcan
 28 and/or Does 1 through 100 with respect to the Modesto Environmental Lawsuits, Plaintiffs

- 1 seek an appropriate allocation as to the amount of Vulcan's liability and other costs as among
- 2 Plaintiffs and the Defendants.

THE PARTIES

4 4. Plaintiff First State Insurance Company is a corporation organized and
5 existing under the laws of the State of Connecticut with its principal place of business in
6 Massachusetts and is authorized to conduct the business of insurance within the State of
7 California.

8 5. Plaintiff Nutmeg Insurance Company is a corporation organized and existing
9 under the laws of the State of Connecticut with its principal place of business in Connecticut
10 and is authorized to conduct the business of insurance within the State of California.

11 6. Plaintiffs allege on information and belief that defendant Vulcan Materials
12 Company (“Vulcan”) is a New Jersey Corporation, that at all relevant times was and is
13 authorized to do business within the State of California, with its principal office in California
14 located within Los Angeles County.

15 7. Plaintiffs allege on information and belief that defendant Ace Property and
16 Casualty Insurance Company is a corporation duly organized and existing under the laws of
17 the State of Pennsylvania with its principal place of business in Pennsylvania, and was at all
18 relevant times authorized to transact the business of insurance within the State of California.

19 8. Plaintiffs allege on information and belief that defendant Affiliated FM
20 Insurance Company is a corporation duly organized and existing under the laws of the State of
21 Rhode Island with its principal place of business in Rhode Island, and was at all relevant times
22 authorized to transact the business of insurance within the State of California.

23 9. Plaintiffs allege on information and belief that defendant Allianz
24 Underwriters Insurance Company is a corporation duly organized and existing under the laws
25 of the State of California with its principal place of business in California, and was at all
26 relevant times authorized to transact the business of insurance within the State of California.

27 10. Plaintiffs allege on information and belief that defendant American Excess
28 Insurance Exchange is a corporation duly organized and existing under the laws of the State of

1 Vermont with its principal place of business in Vermont, and was at all relevant times
2 authorized to transact the business of insurance within the State of California.

3 11. Plaintiffs allege on information and belief that defendant American Home
4 Assurance Company is a corporation duly organized and existing under the laws of the State
5 of New York with its principal place of business in New York, and was at all relevant times
6 authorized to transact the business of insurance within the State of California.

7 12. Plaintiffs allege on information and belief that defendant American Re-
8 Insurance Company is a corporation duly organized and existing under the laws of the State of
9 Delaware with its principal place of business in New Jersey, and was at all relevant times
10 authorized to transact the business of insurance within the State of California.

11 13. Plaintiffs allege on information and belief that defendant Atlanta
12 International Insurance Company is a corporation duly organized and existing under the laws
13 of the State of New York with its principal place of business in Georgia, and was at all
14 relevant times authorized to transact the business of insurance within the State of California.

15 14. Plaintiffs allege on information and belief that defendant Certain
16 Underwriters at Lloyds of London is comprised of certain underwriters transacting insurance
17 related business as an unincorporated association at Lloyd's of London and/or certain London
18 Market insurance companies, whose principal places of business in California are unknown to
19 Plaintiffs, but Plaintiffs believe they were at all relevant times authorized to transact the
20 business of insurance within the State of California.

21 15. Plaintiffs allege on information and belief that defendant Continental
22 Casualty Company is a corporation duly organized and existing under the laws of the State of
23 Illinois with its principal place of business in Illinois, and was at all relevant times authorized
24 to transact the business of insurance within the State of California.

25 16. Plaintiffs allege on information and belief that defendant Employers
26 Reassurance Corporation is a corporation duly organized and existing under the laws of the
27 State of Kansas with its principal place of business in Kansas, and was at all relevant times
28 authorized to transact the business of insurance within the State of California.

1 17. Plaintiffs allege on information and belief that defendant Employers
2 Reinsurance Corporation is a corporation duly organized and existing under the laws of the
3 State of Missouri with its principal place of business in Kansas, and was at all relevant times
4 authorized to transact the business of insurance within the State of California.

5 18. Plaintiffs allege on information and belief that defendant Fireman's Fund
6 Insurance Company is a corporation duly organized and existing under the laws of the State of
7 California with its principal place of business in California, and was at all relevant times
8 authorized to transact the business of insurance within the State of California.

9 19. Plaintiffs allege on information and belief that defendant Gerling America
10 Insurance Company is a corporation duly organized and existing under the laws of the State of
11 New York with its principal place of business in New York, and was at all relevant times
12 authorized to transact the business of insurance within the State of California.

13 20. Plaintiffs allege on information and belief that defendant Granite State
14 Insurance Company is a corporation duly organized and existing under the laws of the State of
15 Pennsylvania with its principal place of business in New York, and was at all relevant times
16 authorized to transact the business of insurance within the State of California.

17 21. Plaintiffs allege on information and belief that defendant Holland-America
18 Insurance Company is a corporation duly organized and existing under the laws of the State of
19 Missouri with its principal place of business currently unknown, and was at all relevant times
20 authorized to transact the business of insurance within the State of California.

21 22. Plaintiffs allege on information and belief that defendant Industrial
22 Indemnity Insurance Services, Inc. is a corporation duly organized and existing under the laws
23 of the State of California with its principal place of business in California, and was at all
24 relevant times authorized to transact the business of insurance within the State of California.

25 23. Plaintiffs allege on information and belief that defendant Insurance Company
26 of North America is a corporation duly organized and existing under the laws of the State of
27 Pennsylvania with its principal place of business in Pennsylvania, and was at all relevant times
28 authorized to transact the business of insurance within the State of California.

1 24. Plaintiffs allege on information and belief that defendant Integrity Insurance
2 Company is a corporation duly organized and existing under the laws of the State of New
3 Jersey with its principal place of business currently unknown, and was at all relevant times
4 authorized to transact the business of insurance within the State of California.

5 25. Plaintiffs allege on information and belief that defendant Lexington
6 Insurance Company is a corporation duly organized and existing under the laws of the State of
7 Delaware with its principal place of business in Massachusetts, and was at all relevant times
8 authorized to transact the business of insurance within the State of California.

9 26. Plaintiffs allege on information and belief that defendant National Union Fire
10 Insurance Company of Pittsburgh, Pennsylvania is a corporation duly organized and existing
11 under the laws of the State of Pennsylvania with its principal place of business in
12 Pennsylvania, and was at all relevant times authorized to transact the business of insurance
13 within the State of California.

14 27. Plaintiffs allege on information and belief that defendant Northwestern
15 National Insurance Company of Milwaukee, Wisconsin is a corporation duly organized and
16 existing under the laws of the State of Wisconsin with its principal place of business in Ohio,
17 and was at all relevant times authorized to transact the business of insurance within the State
18 of California.

19 28. Plaintiffs allege on information and belief that defendant Pacific Employers
20 Insurance Company is a corporation duly organized and existing under the laws of the State of
21 Pennsylvania with its principal place of business in Pennsylvania, and was at all relevant times
22 authorized to transact the business of insurance within the State of California.

23 29. Plaintiffs allege on information and belief that defendant Pacific Indemnity
24 Company is a corporation duly organized and existing under the laws of the State of
25 Wisconsin with its principal place of business in Wisconsin, and was at all relevant times
26 authorized to transact the business of insurance within the State of California.

27 30. Plaintiffs allege on information and belief that defendant Safety National
28 Casualty Corporation is a corporation duly organized and existing under the laws of the State

1 of Missouri with its principal place of business in Missouri, and was at all relevant times
 2 authorized to transact the business of insurance within the State of California.

3 31. Plaintiffs allege on information and belief that defendant Stonewall Insurance
 4 Company is a corporation duly organized and existing under the laws of the State of Rhode
 5 Island with its principal place of business in Massachusetts, and was at all relevant times
 6 authorized to transact the business of insurance within the State of California.

7 32. Plaintiffs allege on information and belief that defendant The Continental
 8 Insurance Company is a corporation duly organized and existing under the laws of the State of
 9 South Carolina with its principal place of business in Illinois, and was at all relevant times
 10 authorized to transact the business of insurance within the State of California.

11 33. Plaintiffs allege on information and belief that defendant TIG Insurance
 12 Company is a corporation duly organized and existing under the laws of the State of California
 13 with its principal place of business in New Hampshire, and was at all relevant times authorized
 14 to transact the business of insurance within the State of California.

15 34. Plaintiffs allege on information and belief that defendant Transport Insurance
 16 Company is a corporation duly organized and existing under the laws of the State of Ohio with
 17 its principal place of business in Ohio, and was at all relevant times authorized to transact the
 18 business of insurance within the State of California.

19 35. Plaintiffs allege on information and belief that defendant Unigard Indemnity
 20 Company is a corporation duly organized and existing under the laws of the State of
 21 Washington with its principal place of business in Washington, and was at all relevant times
 22 authorized to transact the business of insurance within the State of California.

23 36. Plaintiffs allege on information and belief that defendant United States Fire
 24 Insurance Company is a corporation duly organized and existing under the laws of the State of
 25 Delaware with its principal place of business in New Jersey, and was at all relevant times
 26 authorized to transact the business of insurance within the State of California.

27 37. Plaintiffs allege on information and belief that defendant XL Insurance
 28 America, Inc. is a corporation duly organized and existing under the laws of the State of

1 Delaware with its principal place of business in Connecticut, and was at all relevant times
 2 authorized to transact the business of insurance within the State of California.

3 38. Plaintiffs allege on information and belief that defendant Zurich American
 4 Insurance Company is a corporation duly organized and existing under the laws of the State of
 5 New York with its principal place of business in Illinois, and was at all relevant times
 6 authorized to transact the business of insurance within the State of California.

7 39. The true names and capacities, whether individual, corporate, associate, or
 8 otherwise, of Defendants Does 1 through 100 are unknown to Plaintiffs at the present time and
 9 said defendants are therefore sued by such fictitious names pursuant to California Code of
 10 Civil Procedure section 474. When the true names and capacities of said Doe Defendants
 11 have been ascertained, Plaintiffs will amend this Complaint to include such true names and
 12 capacities. Plaintiffs allege on information and belief that each of the Defendants sued herein
 13 as Does 1 through 100 claim some rights pursuant to written insurance policies allegedly
 14 issued by Plaintiffs and/or the Defendants that are insurance companies ("Defendant Insurers")
 15 with respect to the Modesto Environmental Lawsuits.

16 40. The true names and capacities, whether individual, corporate, associate, or
 17 otherwise, of Defendants Does 101 through 300 are unknown to Plaintiffs at the present time
 18 and said Defendants are therefore sued by such fictitious names pursuant to California Code of
 19 Civil Procedure section 474. When the true names and capacities of said Doe Defendants
 20 have been ascertained, Plaintiffs will amend this Complaint to include such true names and
 21 capacities. Plaintiffs allege on information and belief that each of the Defendants sued herein
 22 as Does 101 through 300 issued, is alleged to have issued, or is otherwise responsible for the
 23 obligations under one or more liability insurance policies issued or allegedly issued to Vulcan
 24 and/or one or more of Does 1 through 100. Plaintiffs are unaware of the policy number,
 25 policy period, or other terms and conditions of the liability insurance policies issued or
 26 allegedly issued by Does 101 through 300, inclusive, but will amend this complaint to provide
 27 such policy information when, and if, any Doe defendants' true names and capacities are
 28 ascertained.

JURISDICTION

2 41. This declaratory relief action is proper under Section 1060 of the California
 3 Code of Civil Procedure to determine the rights, duties and obligations of Plaintiffs, Vulcan,
 4 and the other Defendants with respect to insurance policies that Vulcan contends create some
 5 duty to indemnify with respect to the Modesto Environmental Lawsuits (the "Policies").

6 42. An actual and justiciable controversy exists between Plaintiffs, Vulcan, and
 7 the other Defendants concerning the parties' rights, duties and obligations under the Policies.

8 43. Vulcan is in the business of designing, manufacturing, packaging,
 9 distributing, and/or selling certain chemicals and substances to and used by various dry
 10 cleaners in the State of California in their activities and operations at retail locations in
 11 California.

VENUE

13 44. Venue is proper in this Court because, upon information and belief, at all
 14 relevant times Vulcan was and is authorized and qualified under California law to do business
 15 in California and Vulcan's principal business office in California is located in the County of
 16 Los Angeles.

17 45. Specifically, venue is proper in this Court because Vulcan has filed a
 18 Statement by a Foreign Corporation with the California Secretary of State, which states that
 19 Vulcan's principal business office in California is within the County of Los Angeles.

THE POLICIES

21 46. Plaintiffs issued or are alleged to have issued certain liability insurance
 22 policies to Vulcan and/or Does 1 through 100 or allegedly providing coverage to Vulcan
 23 and/or Does 1 through 100, including, but not limited to, policies allegedly identified as
 24 Policies Nos. 921416, 922285, 923370, 924390, 924614, 926638, 927923, 917384, 930112,
 25 930119, BXS100017, BXS101004, 931004, and 931026 (the "Plaintiffs' Policies").

26 47. On information and belief, the Defendant Insurers also issued or are alleged
 27 to have issued certain liability insurance policies to Vulcan and/or Does 1 through 100 and/or
 28 which allegedly provide coverage to Vulcan and/or Does 1 through 100 with policy periods in

1 effect during the relevant time periods. The Plaintiffs' Policies and the insurance policies
 2 issued by the Defendants Insurers are referred to herein collectively as the "Policies."

3 **ENVIRONMENTAL LAWSUITS AGAINST VULCAN**

4 48. On or about November 18, 1998, the City of Modesto Redevelopment
 5 Agency filed a complaint for alleged damages against Vulcan, among others. That action is
 6 entitled *City of Modesto Redevelopment Agency v. Dow Chemical Company, et al.* and is filed
 7 in the California Superior Court for the County of San Francisco, Case No. 999345 (the
 8 "Redevelopment Agency Suit").

9 49. On or about December 3, 1998, the City of Modesto and City of Modesto
 10 Sewer District No. 1 also filed a complaint against Vulcan, among others. That action is
 11 entitled *City of Modesto, et al. v. Dow Chemical Company, et al.* and is filed in the California
 12 Superior Court for the County of San Francisco, Case No. 999643 (the "City of Modesto
 13 Suit").

14 50. On or about March 24, 2003, by order of the Court, the City of Modesto Suit
 15 and the Redevelopment Agency Suit were consolidated under the San Francisco County
 16 Superior Court Case No. 999345. The consolidated Redevelopment Agency Suit and City of
 17 Modesto Suit are herein collectively referred to as the "Modesto Environmental Lawsuits."

18 51. The plaintiffs in the Modesto Environmental Lawsuits asserted a claim
 19 against Vulcan as an alleged manufacturer of certain chemicals, including but not limited to
 20 perchloroethylene ("PERC"), that were distributed to retail dry cleaners in Modesto,
 21 California.

22 52. The plaintiffs in the Modesto Environmental Lawsuits seek to recover from
 23 Vulcan and others the costs of removing, nullifying, or cleaning up environmental
 24 contamination allegedly arising from the release of chemicals, including PERC and
 25 trichloroethylene ("TCE"), into the environment from various dry cleaning operations in
 26 Modesto.

27 53. On June 13, 2006, a jury in the Modesto Environmental Lawsuits awarded
 28 compensatory damages of Three Million One Hundred and Seventy Thousand Dollars

1 (\$3,170,000) against Vulcan and certain other underlying defendants and punitive damages of
 2 One Hundred Million Dollars (\$100,000,000) against Vulcan, hereafter referred to as the
 3 "Modesto Jury Verdict."

4 54. Plaintiffs allege on information and belief that at various times Vulcan
 5 notified or allegedly notified some or all of the Plaintiffs and the Defendant Insurers of the
 6 Modesto Environmental Lawsuits and Vulcan has asserted that some or all of the Plaintiffs
 7 and/or the Defendant Insurers has, had or may have a duty to defend or indemnify Vulcan for
 8 costs, expenses, damages, settlements or judgments with respect to the Modesto
 9 Environmental Lawsuits under their respective alleged insurance policies.

10 55. Plaintiffs contend that they are not obligated to indemnify Vulcan or Does 1
 11 through 100 for some or all costs, expenses, damages, settlements or judgments incurred or
 12 entered with respect to the Modesto Environmental Lawsuits, including with respect to the
 13 Modesto Jury Verdict.

14 56. Plaintiffs believe that the Defendant Insurers also contend that they are not
 15 obligated to indemnify Vulcan or Does 1 through 100 for some or all costs, expenses,
 16 damages, settlements or judgments incurred or entered with respect to the Modesto
 17 Environmental Lawsuits, including with respect to the Modesto Jury Verdict.

18 57. Plaintiffs now seek a declaration of the rights, duties, and liabilities of
 19 themselves (if any), Vulcan, and Does 1 through 100 related to the Modesto Environmental
 20 Lawsuits.

21 58. Plaintiffs also seek a declaration of the rights, duties, and liabilities (if any)
 22 among themselves and the Defendant Insurers under all of the Policies with respect to the
 23 claims of Vulcan and/or Does 1 through 100 for costs, expenses, damages, settlements or
 24 judgments related to the Modesto Environmental Lawsuits, including with respect to the
 25 Modesto Jury Verdict. Plaintiffs further seek a declaration that, if it is determined that either
 26 of the Plaintiffs have a duty to indemnify Vulcan and/or Does 1 through 100 in any respect
 27 related to the Modesto Environmental Lawsuits, such Plaintiff(s) are entitled to equitable
 28 contribution and/or equitable indemnification from the Defendant Insurers under the policies

1 issued by them, such that each such Plaintiff's ultimate share of monies payable, shall not be
2 greater than each such Plaintiff's appropriate share (if any).

FIRST CAUSE OF ACTION

4 (Declaratory Relief – Duty To Indemnify Re Modesto Environmental Lawsuits – Against
5 Vulcan And Does 1-100)

6 59. Plaintiffs reallege and incorporate herein by this reference each and every
7 allegation contained in paragraphs 1 through 59, inclusive, as set forth above.

8 60. Plaintiffs allege on information and belief that Vulcan and Does 1 through
9 100 contend that Plaintiffs and the Defendant Insurers are obligated to indemnify Vulcan
10 and/or Does 1 through 100 for costs, expenses, damages, settlements or judgments with
11 respect to the Modesto Environmental Lawsuits. Plaintiffs contend that they are not obligated
12 to indemnify Vulcan and/or Does 1 through 100 for some or all costs, expenses, damages,
13 settlements or judgments incurred or entered with respect to the Modesto Environmental
14 Lawsuits. A dispute has arisen and an actual controversy exists concerning the alleged
15 obligations of each of the Plaintiffs and each of the Defendant Insurers to indemnify Vulcan
16 and/or Does 1 through 100 in connection with the Modesto Environmental Lawsuits.

17 61. Pursuant to California Code of Civil Procedure section 1060, Plaintiffs seek a
18 judicial declaration of the parties' respective rights and obligations under the actual or alleged
19 liability policies with respect to the Modesto Environmental Lawsuits and, in particular,
20 whether and to what extent each of the Plaintiffs has a duty to indemnify Vulcan and/or any of
21 Does I through 100 for costs, expenses, damages, settlements or judgments with respect to the
22 Modesto Environmental Lawsuits.

SECOND CAUSE OF ACTION

24 (Declaratory Relief – Duty To Indemnify Re Modesto Jury Verdict – Against Vulcan
25 And Does 1-100)

26 62. Plaintiffs reallege and incorporate herein by this reference each and every
27 allegation contained in paragraphs 1 through 59, 61 and 62, inclusive, as set forth above.

1 63. Plaintiffs allege on information and belief that Vulcan and Does 1 through
 2 100 contend that Plaintiffs and the Defendant Insurers are obligated to indemnify Vulcan
 3 and/or Does 1 through 100 with respect to the Modesto Jury Verdict. Plaintiffs contend that
 4 they are not obligated to indemnify Vulcan and/or Does 1 through 100 with respect to the
 5 Modesto Jury Verdict. A dispute has arisen and an actual controversy exists concerning the
 6 alleged obligations of each of the Plaintiffs and each of the Defendant Insurers to indemnify
 7 Vulcan and/or Does 1 through 100 in connection with the Modesto Jury Verdict.

8 64. Pursuant to California Code of Civil Procedure section 1060, Plaintiffs seek a
 9 judicial declaration of the parties' respective rights and obligations under the actual or alleged
 10 liability policies with respect to the Modesto Jury Verdict and, in particular, whether and to
 11 what extent each of the Plaintiffs has a duty to indemnify Vulcan and/or any of Does 1
 12 through 100 with respect to the Modesto Jury Verdict.

13 **THIRD CAUSE OF ACTION**

14 **(Declaratory Relief – Duty To Indemnify – Against All Defendants)**

15 65. Plaintiffs reallege and incorporate herein by this reference each and every
 16 allegation contained in paragraphs 1 through 59, 61, 62, 64, and 65, inclusive, as set forth
 17 above.

18 66. Plaintiffs contend that if Plaintiffs are found to be obligated to indemnify
 19 Vulcan and/or Does 1 through 100 for costs, expenses, damages, settlements or judgments
 20 with respect to the Modesto Environmental Lawsuits, including the Modesto Jury Verdict,
 21 then some or all of the Defendants are also obligated to indemnify Vulcan and/or Does 1
 22 through 100 with respect to the Modesto Environmental Lawsuits, including the Modesto Jury
 23 Verdict, and/or to contribute to the alleged amounts incurred or to be incurred by Vulcan
 24 and/or Does 1 through 100. Plaintiffs allege on information and belief that some or all of the
 25 Defendants contend that even if Plaintiffs are found to be obligated to indemnify Vulcan
 26 and/or Does 1 through 100 for costs, expenses, damages, settlements or judgments with
 27 respect to the Modesto Environmental Lawsuits, they are not obligated to indemnify Vulcan
 28 and/or Does 1 through 100 for costs, expenses, damages, settlements or judgments with

1 respect to the Modesto Environmental Jury Lawsuits, including the Modesto Jury Verdict,
2 and/or to contribute to any alleged amounts incurred or to be incurred.

3 67. An actual justiciable controversy therefore presently exists among Plaintiffs
4 and the Defendants. Pursuant to California Code of Civil Procedure section 1060, Plaintiffs
5 seek a judicial declaration of the parties' respective rights and obligations under the insurance
6 policies actually or allegedly issued by Plaintiffs and each of the Defendant Insurers that are
7 alleged to provide coverage for the Modesto Environmental Lawsuits. In particular, Plaintiffs
8 seek a declaration that, if one or more of Plaintiffs is required to indemnify Vulcan and/or any
9 of Does 1 through 100 for costs, expenses, damages, settlements or judgments with respect to
10 the Modesto Environmental Lawsuits, then one or more of the Defendants are required to
11 contribute an appropriate share of the total amount of costs, expenses, damages, settlements or
12 judgments paid and/or to be paid by Plaintiffs to or on behalf of Vulcan and/or any of Does 1
13 through 100 with respect to the Modesto Environmental Lawsuits.

FOURTH CAUSE OF ACTION

(Equitable Indemnity – Against All Defendants)

16 68. Plaintiffs reallege and incorporate herein by this reference each and every
17 allegation contained in paragraphs 1 through 59, 61, 62, 64, 65, 67, and 68, inclusive, as set
18 forth above.

19 69. If it is adjudicated that Plaintiffs are obligated to indemnify Vulcan and/or
20 any of Does 1 through 100 for costs, expenses, damages, settlements or judgments with
21 respect to the Modesto Environmental Lawsuits, then, based upon the principle of equitable
22 indemnification, some or all of the Defendants should be required to contribute or reimburse
23 an appropriate portion of the total amount paid and/or to be paid to or on behalf of Vulcan
24 and/or any of Does 1 through 100.

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28 //

FIFTH CAUSE OF ACTION

(Equitable Contribution – Against All Defendants)

3 70. Plaintiffs reallege and incorporate herein by this reference each and every
4 allegation contained in paragraphs 1 through 61, 62, 64, 65, 67, 68, and 70, inclusive, as set
5 forth above.

6 71. If it is adjudicated that Plaintiffs are obligated to indemnify Vulcan and/or
7 any of Does 1 through 100 for costs, expenses, damages, settlements or judgments with
8 respect to the Modesto Environmental Lawsuits, then, based upon the principle of equitable
9 contribution, some or all of the Defendants should be required to contribute an appropriate
10 portion of the total amount paid and/or to be paid to or on behalf of Vulcan and/or any of Does
11 1 through 100.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief as follows:

On The First, Second, And Third Causes Of Action

15 1. For a judicial declaration of the respective rights and obligations of each of
16 the Plaintiffs and each of the Defendants under all policies allegedly applicable to the costs,
17 expenses, damages, settlements or judgments allegedly incurred or to be incurred with respect
18 to the Modesto Environmental Lawsuits, including with respect to the Modesto Jury Verdict;

On The Fourth And Fifth Causes Of Action

20 1. For a judicial declaration of the respective rights and obligations of each of
21 the Plaintiffs and each of the Defendants for indemnity and/or contribution related to the
22 Modesto Environmental Lawsuits and, in particular, if it is adjudicated that Plaintiffs are
23 obligated to indemnify Vulcan and/or any of Does 1 through 100 for any costs, expenses,
24 damages, settlements or judgments with respect to the Modesto Environmental Lawsuits, that
25 some or all of the Defendants are liable to one or both of the Plaintiffs for their appropriate
26 share of the amounts incurred and/or to be incurred:

27 | //

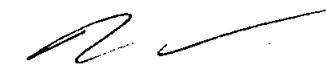
28 //

1 On All Causes Of Action

- 2 1. For attorneys' fees and costs incurred herein; and
3 2. For such other and further relief as the Court deems appropriate.

4 DATED: June 28, 2006

Michael W. Ellison
Smith ♦ Ellison
A Professional Corporation

6 By: 

7 Michael W. Ellison
8 Attorney for Plaintiffs First State Insurance
9 Company and Nutmeg Insurance Company

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